

**THE HIGH COURT**

[2022] IEHC 641  
[Record No. 2022/ 6 JR]

**BETWEEN**

**K.B.**

**APPLICANT**

**AND**

**INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE  
AND EQUALITY**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Barr delivered on the 4th day of November, 2022.**

**Introduction.**

1. The applicant is a Georgian national. She is 29 years old. She arrived in Ireland on 11th February, 2018. On that date, the applicant applied for international protection for her and her daughter, who had travelled with her.
2. A decision of the International Protection Officer (hereafter, "IPO") issued on 5th June, 2019, pursuant to s. 39 of the International Protection Act 2015. That decision recommended that the applicant should not be granted refugee status or subsidiary protection.
3. The applicant lodged a notice of appeal to that decision on 21st August, 2019. An oral hearing of the appeal was held on 9th January, 2020.
4. In a decision dated 27th January, 2020, the Tribunal Member upheld the decision made at first instance and recommended that the applicant should not be granted either refugee status or subsidiary protection.
5. The applicant issued judicial review proceedings seeking an order of certiorari quashing that decision of the Tribunal Member. That order was agreed to on consent of the parties and the matter was remitted to the first respondent for rehearing.
6. The matter was reheard by a different Tribunal Member on 21st October, 2021. In a decision dated 13th December, 2021, the Tribunal Member upheld the decision at first instance and recommended that the applicant should not be granted refugee status or subsidiary protection.
7. It is this second decision of the first respondent which is at issue in these proceedings. The principal relief sought by the applicant in these proceedings is an order of certiorari quashing the decision of the first respondent, together with an order remitting the appeal for reconsideration by another Tribunal Member.

**Background.**

8. The factual background to these proceedings is set out extensively in the applicant's affidavit, sworn on 7th January, 2022. It can be summarised in the following way: The applicant married G.K. in 2014. Her husband is also the subject of an international protection application. The applicant and her husband have two children together, one of

whom was born after the applicant's arrival in the State. Both children are the subject of the applicant's international protection application.

9. G.K. began working as a private security guard for a wealthy businessman in Georgia in 2014. The couple lived together in Georgia. The applicant stated that in May 2017 her husband began acting strangely. He had ceased communicating with his family. He left Georgia on 30th May, 2017. Subsequently, he called the applicant on 1st June, 2017, to tell her that he had come to Ireland, as he had been incurring problems at his work.
10. The applicant averred that on 14th or 15th June, 2017, two men came to her home in Georgia and asked where her husband was. When the applicant indicated that she did not know where her husband was, it was alleged that the two men threatened her and her daughter. She stated that they insinuated that harm would come to the applicant and her daughter, if her husband did not return to Georgia. These men, who were possibly part of the secret service, had asked the applicant's husband to report on the movements of his employer.
11. The applicant contacted her father-in-law, who indicated that G.K. had been incurring problems at work and advised the applicant not to contact the police in relation to the incident which had occurred with the two men. The applicant stated that, for the safety of her and her family, she moved into her parents' home until September 2017.
12. In September 2017, she returned to [city redacted] and began to continue her life as normal. She stated that sometime at the end of October 2017, two men, posing as employees of a gas company, entered the applicant's home by force. The applicant stated that one of the men threatened her, abused her, and sexually assaulted her. She stated that she had been raped by one of the men. She stated that the man demanded that the applicant's husband return to Georgia immediately.
13. It was averred that the applicant phoned her husband in a frantic and upset manner on the evening of the assault. She indicated to him that she would commit suicide were she to be attacked again. She did not tell her husband that the assault had been sexual in nature.
14. The applicant averred that she and her daughter remained at home in fear of their safety until late November 2017. Her mother-in-law and father-in-law moved in with them to provide security. In early December 2017, the applicant and her daughter moved back into the applicant's parents' home.
15. In January 2018, the applicant returned to [city redacted]. She averred that she returned to her home, as her husband had told her that he had arranged for someone to aid her and her daughter's entry into Ireland, and she wished to collect her daughter's birth certificate. It was averred that while walking towards her home one day, she was approached by two men on the street. The applicant stated that the older of the two men threatened her. It was alleged that he told the applicant that she should tell her husband

to return to Georgia, or her daughter would go missing from her kindergarten. The applicant did not report this threat to the authorities. The applicant stated that after this incident, she was very eager to leave Georgia and bring her daughter to safety.

16. On 10th February, 2018, the applicant and her daughter left Georgia. They arrived in the State via Germany on 11th February, 2018, using a false Lithuanian identification document. Upon arrival in the State, the applicant applied for international protection for her and her daughter.
17. Further, it was stated that the applicant's father-in-law was also threatened by other men, sometime in January 2019, in relation to the whereabouts of his son, being the applicant's husband. It was alleged that the applicant's father-in-law suffered cardiac arrest as a result of these events.
18. At this juncture, it is necessary to set out the procedural background to the hearing of the applicant's international protection application and her husband's application.

**Procedural Background.**

19. Counsel for the applicant indicated to the court that, typically, in cases of international protection applications taken by married couples, the applications are heard concurrently and are effectively treated as linked matters. In this case, the applicant averred that this was not the case for her and her husband owing to the nature of the assault she was alleged to have suffered in Georgia.
20. It was averred that in Georgian culture, it would be considered dishonourable to have been sexually assaulted and would bring considerable embarrassment to both her and her family. For that reason, the applicant did not wish to disclose the nature of the assault in October 2017 to her husband. Accordingly, the applicant's hearing was conducted entirely separate to that of her husband.
21. Further, the applicant averred that she was present and willing to give evidence at her husband's appeal hearing of 17th October, 2019; however, the Tribunal Member presiding over that hearing, refused to allow her to give evidence without written consent from her own legal representative.
22. Returning to the applicant's proceedings, she attended an interview pursuant to s. 13(2) of the 2015 Act on 13th February, 2018 (hereafter referred to as "the s. 13 interview"). The applicant submitted her International Protection Questionnaire on 5th April, 2018.
23. The applicant attended an interview pursuant to s. 35(12) of 2015 Act on 28th April, 2018 (hereafter referred to as "the s. 35 interview"). On 5th June, 2019, a report issued by the IPO, pursuant to s. 39 of the 2015 Act, which recommended that the applicant should not be granted refugee status or subsidiary protection.
24. The applicant lodged a notice of appeal on 21st August, 2019. An oral hearing of this appeal was heard on 9th January, 2020. A decision subsequently issued on 27th January,

2020. That decision was the subject of judicial review proceedings, wherein the applicant challenged the first respondent's decision on a number of grounds. An order of *certiorari* was made on consent of the parties, and the matter was remitted to the first respondent for rehearing.

25. A second hearing was heard by a different Tribunal Member on 21st October, 2021. By decision dated 13th December, 2021, the first respondent upheld the initial finding of the IPO to refuse the applicant refugee status and subsidiary protection.
26. In these proceedings the applicant has sought to challenge that decision of the first respondent, being the December 2021 decision. The submissions of the parties in that regard are set out below.
27. At para. 4.3 of that decision, the first respondent outlined that when asked why her husband had never mentioned the October 2017 attack during the course of his International Protection Application, the applicant's answer in her s. 35 interview, was merely that she did not know why he had not mentioned it. The first respondent concluded that "[n]o reasonable explanation has ever been offered for the complete failure of the appellant's husband to mention this event in his own claim for protection."
28. At para. 4.4 of the decision, the first respondent noted that the applicant had made no request to call her husband as a witness at the hearing, to resolve the inconsistencies as between the parties. Further, he noted that the applicant had offered no reasonable explanation for the failure of her husband to mention the October 2017 attack, and subsequently drew an adverse credibility finding against the applicant on that basis.

**Applicant's Submissions.**

29. Mr O'Dwyer SC, on behalf of the applicant, challenged both of the above-mentioned findings of the first respondent on the basis that they constituted a breach of procedural fairness and natural and constitutional justice. Furthermore, counsel submitted that the applicant's husband had in fact mentioned the October 2017 attack on his wife in his International Protection Application, and therefore the Tribunal Member erred in fact in his adverse credibility finding in that regard.
30. Counsel pointed the court to the applicant's husband's s. 35 interview, which occurred on 25th May, 2019. He specifically noted questions 31 to 37, wherein the applicant's husband had specifically referred to both the June 2017 and October 2017 attacks on his family.
31. Counsel referred the court to the decision of *I.R. v. Minister for Justice, Equality & Law Reform & Anor* [2009] IEHC 353, in support of the proposition that any adverse credibility findings must be based on correct facts, put to the applicant in a truthful manner. Counsel also referred the court to the decision of *H.R. v. Refugee Appeals Tribunal & Anor* [2011] IEHC 151, as further supporting this submission.

32. With regard to the finding that the applicant's husband should have been called as a witness at the applicant's hearing, counsel submitted that the applicant should have been afforded an opportunity to address this finding at the hearing of her appeal. He submitted that had the applicant been allowed to address this finding, she would have explained to the first respondent the reasons that her claim had been separate from her husband's, as her husband was unaware of the sexual nature of the alleged assault against her. In particular, he was not aware that she had been raped and the applicant did not wish him to find that out.
33. Counsel relied on the case of *Idiakheua v. Minister for Justice, Equality & Law Reform* [2005] IEHC 150, in support of the submission that key findings of the first respondent's decision should be fairly put to the applicant, to allow her the opportunity to answer them.
34. Further, counsel noted the UNHCR Resettlement Handbook, 2011, which stated that care must be taken to retain confidentiality with respect to disclosures of sexual assault to family members of applicants. It was noted that the UNHCR Handbook specifically stated that women asylum-seekers should be interviewed separately to their male family members, to ensure that they have adequate opportunity to present their case.
35. Finally, it was submitted that the decision maker's failure to note the prevalent levels of gender-based violence in Georgia, as outlined in '*National Study on Violence against Women in Georgia*' released by UN Women and GEOSTAT, constituted a breach of the principles of fair procedures and constitutional justice.

**Respondents' Submissions.**

36. Mr. Leonard BL, on behalf of the respondents, submitted that it was well established that an administrative decision-maker has the power to make decisions as they see fit, provided the decision was reasonable and rational in all the circumstances. Counsel submitted that the court should refrain from substituting its own view for that of the first respondent. It should only intervene if it was satisfied that the decision was irrational, or unreasonable in the legal sense, or that there had been a breach of fair procedures.
37. Counsel submitted that the net issue between the parties in these proceedings went to the credibility of the applicant. It was submitted that the first respondent was entitled not to accept the evidence proffered by the applicant in these proceedings. It was submitted that the findings which had been made, were entirely rational and reasonable in the circumstances and did not constitute a breach of the applicant's right to fair procedures in the administrative process.
38. It was submitted that implicit in the applicant's answer regarding her husband's failure to mention the October 2017 assault, to the effect that she did not know why he had not mentioned the attack, was an acceptance of the fact that her husband had not mentioned the attack. Counsel submitted that the first respondent was entitled to draw an inference

from her answer in that regard, as it was inconsistent with the evidence which was readily available to the applicant.

39. Further, counsel submitted that the onus was on the applicant to engage fully with the immigration process, relying on *Khan & Ors. v. Minister for Justice, Equality & Law Reform* [2017] IEHC 800 to support this submission. Counsel submitted that an applicant is under an obligation to put his/her best case forward, bearing the whole legal burden in that regard. It was submitted that, in failing to call her husband to give evidence at the hearing of her appeal, the applicant had failed to fully advance her case, which was not the fault of the first respondent. Counsel submitted that the first respondent was entitled to draw conclusions from this failure and that the applicant's right to fair procedures had not been breached in this process, nor was it irrational or unreasonable in the legal sense.
40. It was submitted that the first respondent had made entirely reasonable findings on the applicant's credibility with regard to the principles as they are set out in the *I.R. v. MJE* decision. It was submitted that it was within the power of the first respondent not to accept the evidence of the applicant, after sufficient analysis of the evidence presented to him. It was submitted that this non-acceptance of the evidence did not constitute a breach of the applicant's right to fair procedures, as submitted by counsel for the applicant. In that regard, counsel relied on *R.K. v. The International Protection Appeals Tribunal & Ors.* [2020] IEHC 522.

#### **Conclusions.**

41. It has been well recognised in the area of international protection, that female asylum seekers, who have been subjected to sexual assault or rape, will often be reluctant to disclose details of the assault to members of their family and to third party agencies, for a variety of reasons. The UNHCR Resettlement Handbook noted the following in chapter 6:

*"It must be kept in mind that family members may not all be aware of the violence that individuals in the family have faced. For example, a survivor of rape or other sexual violence may not have informed other family members. Care must be taken to retain confidentiality."*

42. This issue was also recognised in the UNHCR Guidelines on International Protection: Gender-Related Persecution, published on 7th May, 2002, which provided that women asylum seekers should be interviewed separately, without the presence of male family members, in order to ensure that they have an opportunity to present their case. Finally, a publication on the mental health of refugees, published by the UNHCR/WHO in 1996, recognised that refugee women and girls are often discouraged by their culture or religion from revealing that they have been raped, or from openly discussing their experience.
43. In fairness to the two tribunal members who dealt with the applicant's case, it was recognised by them that, given the nature of the assault to which she alleged she had been subjected in October 2017, it was recognised that there could be a valid reason why her application would be treated entirely separately from that of her husband. Namely, to

avoid him learning of the nature of that assault. This is the crucial point, which determines much of the content of the interviews that were given by the applicant's husband when pursuing his own claim for international protection, where he recounted the conversations that he had had with his wife about the various threats and assaults.

44. The paragraph which contains the key findings of the tribunal member are those set out at para. 4.4 of the decision. It is in the following terms: -

*"The Tribunal will deal later in this credibility analysis with the late disclosure of a sexual dimension to the alleged attack on the appellant in October 2017. However, at this point in the analysis the Tribunal is concerned only with the fact of a significant physical attack on the appellant at her home in October 2017, which has been an aspect of the appellant's claim from the beginning of the process. Crucially, the appellant confirmed at the appeal hearing that, on the same day of the attack on her in October 2017, her husband had been informed by her in a phone call made to him in Ireland of a violent physical attack on her by people who made threats against him that left her in such a state of distress that she expressed a suicidal ideation to him. No reasonable explanation has ever been offered for the complete failure of the appellant's husband to mention this event in his own claim for protection, particularly when the alleged attack on his wife was directly connected to him. In this regard, the Tribunal notes that no request was made on behalf of the appellant to have her husband give evidence on appeal that might possibly resolve the inconsistency between his account and her account even though the appellant was on notice in the IPO decision refusing her claim for protection that the IPO viewed this to be a significant credibility issue in the appellant's claim. The Tribunal finds that no reasonable explanation has been offered for the failure of the appellant's husband, whose own claim shares the same broad factual matrix as the appellant's claim, to mention any attack whatsoever on the appellant in October 2017 and the Tribunal finds this inconsistency between his account and the appellant's account to be significantly undermining of the appellant's credibility."*

45. The court is satisfied that the submissions made on behalf of the applicant, to the effect that the findings made by the tribunal member in that paragraph cannot be supported at law, are valid submissions. The reason for this is that the tribunal member proceeded on the basis of questions that had been put to the applicant by the presenting officer, which questions were themselves based on a false premise: namely, that her husband had not mentioned the October 2017 attack in his application for international protection; when it was the applicant's case, that she had told him of the attack on the very night that it had happened; albeit that she had not mentioned the sexual nature of the attack.
46. When the questions were put in that form to the applicant, they were based on an assertion that her husband had not mentioned the October 2017 attack at all. That was incorrect. When one looks at his s.35 interview, which took place on 27th May, 2019, it is clear that he had referred to the various encounters that his wife had had with the men

who came to their house in June 2017 and in October 2017. In his response to Q.14, he had stated that prior to his departure from Georgia, he had been threatened, but the men from the security services had not threatened his family. However, he then stated "*now they threaten my family too*". He went on to state in response to Q.31, that he had been sought again by the same men after he had left Georgia. He stated that the men had gone and talked to his wife. That had happened in June 2017. He stated that they had wanted to get information about him, where he was and what he was doing.

47. The critical response was given in answer to Q.34, where he was asked whether his wife had been approached again, after June 2017. To that, he replied as follows: -

*"In a couple of months they went again, visiting her. When they approached my wife the first time, she went to Kakheti where her family lives, to stay away. Then she came back to [city redacted] and they approached her again. They started [sic] her threatening her, verbally abusing and also pushing her, but she does not talk about this".*

48. The applicant's husband went on to state that he had been told in the middle of June 2017 that the men had come to the house looking for him. He was asked whether he had been told about the second incident, to which he replied that he had been told about it by his wife. He stated that it was: "*a little bit more than two months, it was three months after the first incident.*"
49. It is against that factual background that the court must consider the reasonableness and fairness of the question that had been posed to the applicant, wherein it had been put to her that her husband had not mentioned the October 2017 attack at all. When that was put to her as a statement of fact, the applicant had stated that she did not know why he had not mentioned it. The tribunal member then went on to reach the finding that he had done at para. 4.4 that "*[n]o reasonable explanation has ever been offered for the complete failure of the appellant's husband to mention this event in his own claim for protection, particularly when the alleged attack on his wife was directly connected to him*". The tribunal member went on to find that the failure of the applicant's husband to mention "*any attack whatsoever on the appellant in October 2017*", was significantly undermining of her credibility.
50. The court is satisfied that this finding was made in breach of the applicant's right to fair procedures. It was based on a totally false premise, which was put to the applicant as a statement of fact as part of the question that was put to her by the presenting officer. The premise that was contained in the question that was put to her, was factually incorrect. It is unfair for a decisionmaker to make an adverse finding of credibility against an applicant on the basis of her answer to a question that was posed on an incorrect basis. On this ground alone, the court would set aside the decision of the tribunal member of 13th December, 2021.



51. The court is satisfied that for the reasons set out above, the decision of the tribunal member offends against principles 4, 5 and 6 as set out in *IR v. Minister for Justice Equality and Law Reform* [2009] IEHC 353, which are in the following terms:

*"4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.*

*5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.*

*6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given."*

52. There is a further basis on which the court is of the view that the decision of the tribunal member cannot stand. In his decision, the tribunal member noted that no request was made on behalf of the appellant to have her husband give evidence on an appeal that might possibly resolve the inconsistency between his account and her account, even though the appellant was on notice in the IPO decision refusing her claim for protection, that the IPO viewed this to be a significant credibility issue in the appellant's claim. That issue was the alleged failure on the part of the appellant's husband to mention the assault on his wife in October 2017, in the course of his application for international protection. The court is satisfied that this issue, being the failure to call her husband as a witness, was never put to the applicant in the course of her appeal before the tribunal member. In other words, the tribunal member reached a negative credibility finding on the basis of factual circumstances, namely the failure of the applicant to call her husband as a witness, without giving the applicant an opportunity to explain why that might have been so.

53. The importance of fairly putting all matters on which a credibility decision may be based to an applicant, was emphasised by Clarke J. in *Idiakheua v. Minister for Justice Equality and Law Reform* [2005] IEHC 150, where he stated as follows at p.9 of the judgment: -

*"If a matter is likely to be important to the determination of the RAT then that matter must be fairly put to the applicant so that the applicant will have an opportunity to answer it. If that means the matter being put by the Tribunal itself then an obligation so to do rests upon the Tribunal. Even if, subsequent to a hearing, while the Tribunal member is considering his or her determination an issue which was not raised, or raised to any significant extent, or sufficient at the hearing appears to the Tribunal member to be of significant importance to the determination of the Tribunal then there remains an obligation on the part of the Tribunal to bring that matter to the attention of the applicant so as to afford the applicant an opportunity to deal with it. This remains the case whether the issue is*

*one concerning facts given in evidence by the applicant, questions concerning country of origin information which might be addressed either by the applicant or by the applicant's advisors or, indeed, legal issues which might be likely only to be addressed by the applicant's advisors."*

54. The court is satisfied that in failing to give the applicant an opportunity to explain the absence of her husband from her appeal hearing, the tribunal member failed to accord fair procedures to the applicant on the hearing of the appeal. This was all the more significant, due to the fact that it was part of the basis on which the tribunal member made a negative credibility finding due to the alleged inconsistency between the applicant's husband's account and the applicant's own account and found that to be "*significantly undermining*" of the applicant's credibility. The failure to put this to the applicant was important to the fairness of the hearing, because the applicant had a good reason why she could not call him; namely, that if she did so, he would inevitably have learned that she had been raped. The applicant never got the chance to articulate the reason for his absence. On this ground as well, the decision of the tribunal member must be struck down.
55. As the court is satisfied that the tribunal decision of 13th December, 2021 must be struck down on these grounds, it is not necessary to deal with the remaining grounds of challenge raised in the pleadings, as they were not seriously pursued at the hearing of the application.
56. The parties will have seven days within which to furnish brief written submissions on the terms of the final order and on costs. The matter will be listed for mention at 10:45 hours on 23rd November, 2022 for the purpose of making final orders in the matter.